

SENATE BILL REPORT

SB 5232

As Reported by Senate Committee On:
Judiciary, February 04, 2009

Title: An act relating to protecting registered school students from sexual misconduct by school employees.

Brief Description: Protecting registered school students from sexual misconduct by school employees.

Sponsors: Senators Delvin, Holmquist, Hewitt, Schoesler, Carrell, King, Swecker, Pflug, Shin, Kastama, Benton, Kohl-Welles and Roach.

Brief History:

Committee Activity: Judiciary: 1/28/09, 2/04/09 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5232 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles and Tom.

Staff: Brandon Roché (786-7405)

Background: Currently, a school employee is guilty of sexual misconduct with a minor in the first degree when the employee has sexual intercourse with a registered student of the school who is at least 16 years old and not married to the employee, if the employee is at least 60 months older than the student. Sexual misconduct with a minor in the second degree involves the same age qualifications but applies where there is sexual contact instead of sexual intercourse.

In *State of Washington v. Hirschfelder*, the division II court of appeals held that this statute does not apply when the student is over the age of 18. The court relied on the legislative history of a series of bills that eventually led to the current statute. Of note to the court were the Legislature's and Governor's interpretation of the word "minor" throughout the process.

By statute, basic education programs must be accessible to students up to the age of 21.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill (Recommended Substitute): Sexual misconduct with a minor in the first or second degree encompasses school employees who have sexual relations with an enrolled student of the school where the employee is employed.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): "Registered" student is changed to "enrolled" student. "Enrolled student" means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based instruction under chapter 28A.200 RCW.

There is no mandatory minimum sentence.

Appropriation: None.

Fiscal Note: Requested on January 23, 2009.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Many high school students will turn 18 before graduating and are still in need of being protected while in school. Most of the students who are in school up to the age of 21 are some of the most fragile students we serve. This protects developmentally disabled kids who are the primary group in school up to the age of 21. All students are required by law to be at school and we should protect them while they are there.

This is a bill we need to protect our students. We had an incident in our district where a teacher was alleged to have had sex with an 18 year old student, and he will never have to go to jail or pay a penalty. It's not about age; it's about the relationship between teachers and students. We think it's appropriate to criminalize this behavior.

CON: This bill seeks to criminalize sexual contact between consenting adults. Our law recognizes that once people reach the age of 18 they have the right to make decisions regarding their own bodies. Nowhere else in our state statutes do we criminalize this type of behavior between consenting adults.

Persons Testifying: PRO: Senator Delvin, prime sponsor; Rebecca Hissam, citizen; Heather Cleary, Richard Jansons, Richland School Board; Jena Graham, Legislative Youth Advisory Council; Tom McBride, Washington Association of Prosecuting Attorneys.

CON: Wade Samuelson, Washington Association of Criminal Defense Lawyers.